IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18754 OF 2007

Dated : September 6, 2007

Between:

The Secretary to Government,
Finance and Planning Department,
Secretariat Buildings, Hyderabad and others

Petitioners

AND

S.Vasanth Kumar and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 18754 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records

relating to the order, dated 18.04.2007 passed in O.A. No. 2436 of 2005 by the Andhra Pradesh Administrative Tribunal, Hyderabad, and to quash the same being erroneous, illegal, unreasonable and arbitrary, the petitioners filed this writ petition.

The respondents herein filed the above O.A. before the Tribunal assailing action of the fourth respondent in surrendering their services, without notice and in violation of orders issued in GO Ms. No. 203 dated 27.4.2002, being contrary and illegal.

Few facts, that are necessary for disposal of this writ petition, are that father of the respondents 1 and 2 retired on medical invalidation on 25.6.1998 and 26.10.196 respectively, while working in Police Department. The 3rd petitioner herein allotted services of the respondents herein to the 4th petitioner, directing him to issue appointment orders to them within seven days after verification of the original certificates, who appointed them as Junior Assistants by order dated 22.6.1999 and posted them at Dist. Treasury, Kadapa and they joined on 23.6.1999 and discharging duties as such. While so, the Government has issued GO Ms. No. 203 dated 27.04.2002 based on judgment of this court in WP No. 13489 of 2000 dated 12.10.2001 cancelling the medical invalidation scheme. Consequently, the 4th petitioner was directed to surrender the services of the respondents to

the 3rd petitioner for appointment as Panchayath Secretaries on contract basis. The 4th petitioner, therefore, issued proceedings in RC No.A1/3722/1999 dated 18.5.2005 surrendering the services of the respondents to the District Collector.

Aggrieved thereby, the respondents herein filed the above O.A. contending that certain guidelines were issued in GO Ms. No. 202 dated 27.4.2002 and one of the guideline is that the appointments made prior to 12.10.2001 shall continue and since the respondents were appointed prior to that date, their services cannot be surrendered under the guise of the said GO.

The Tribunal having considered the issue at length, allowed the O.A., observing that the Government have issued specific orders after the judgment of this court in WP No. 13489 of 2000 and Batch dated 12.10.2001, in GO Ms. No. 203 GAD dated 27.4.2002 wherein it is specifically stated that the scheme of compassionate appointment to the dependents of Government employees who retire on medical invalidation is in force since a long time and the appointments already made so far shall be allowed to stand as it is and, therefore, held that the impugned memo and the consequential orders issued by the petitioners herein are in violation of GO Ms. No. 203 dated 27.4.2002 and, therefore, set aside the same and the respondents herein were ordered to be

continued in accordance with their appointment orders.

The learned Government Pleader for Services II, appearing for the petitioners herein contended that the respondents have no right whatsoever after the Division Bench Judgment of this court in seeking appointment on medical invalidation and, hence, the order of the Tribunal, is erroneous in setting aside the Government Memo and in continuing the respondents as per their appointment orders.

The learned counsel for the respondents herein contended that they were appointed in the year 1999 and the impugned Memo was served on them in the year 2005 i.e. nearly after six years. Therefore, at this length of time, it is not just for the petitioners to seek surrender of the services of the respondents, under the guise of GO Ms. No. 203 General Administration Department Dated 27.4.2002.

Before delving on the contentious issues, it is apt to extract para No. 2(i) and (iv) of GO Ms. No. 203 GAD dated 27.4.2002,which reads:

> "…The scheme of compassionate appointment to the dependents of Government Employees who retire on medical invalidation is in force since a long time. The appointments already so far made, shall be allowed to stand as its…."

> "…Pursuant to the agreement with the Joint Action

> Committee of employees on 24th March, 2002, on Medical Invalidation Scheme, in respect of the cases where the employees have taken retirement on Medical Invalidation, but appointments were not made to the dependants due to administrative delays on 12th October, 2001, i.e. the date of the Judgment of the High Court of Andhra Pradesh wherein the Scheme of Compassionate appointment in Medical Invalidation cases is held unconstitutional, the legality of providing employments under Medical Invalidation scheme will be examined separately and orders thereon will be issued separately…

The fact that the respondents were given appointments in the year 1999 is not disputed. It is also not disputed that they were discharging duties from the date of their appointments. GO Ms. No. 203 dated 27.4.2002 specifically provides that the appointments already made so far, shall be allowed to stand as it is. Therefore, as observed by the Tribunal, the impugned memo and the consequential orders issued by the petitioners herein are in violation of the said G.O. The respondents herein have put in six years of service under the 4th petitioner herein, therefore, their services ought not to have been surrendered to the 3rd respondent, inasmuch even as per G.O. Ms. No. 203 dated 27.4.2002, the appointments made on compassionate grounds prior to 12.10.2001 i.e. date of judgment in W.P. No. 13489 of 2000 and Batch, shall be allowed to continue.

We are fortified in our view by a judgment of the Apex Court in *Food Corporation of India and another Vs. Ram Kesh Yadav and Another* ([1]) wherein the Apex Court has held that when an employee seeks premature retirement on medical grounds coupled with compassionate employment for his son and the employer accepts the conditional offer and allowed the employee to retire, subsequently, it is not open for the employer to refuse compassionate employment to the retiree's son and, therefore, directed the employer to offer employment to the retiree's son.

In the instant case also, having appointed the respondents on compassionate grounds, it is not open for the respondents now to seek surrender of their services. Having considered the facts and circumstances of the case, we do not see any illegality in the impugned order. Consequently, we do not see any justifiable ground to interfere with the impugned order.

The Writ Petition fails and is accordingly dismissed at the stage of admission. No order as to cost.

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T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

September 6, 2007
MAS

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[1] JT 2007 (4) SC 1